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Case No. 94-1920

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JAMES OKUN AND NORMA OKUN,

Petitioners,

versus

STATE OF OKLAHOMA, Ex Rel.,
DEPARTMENT OF HUMAN SERVICES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF OKLAHOMA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should exercise its extraordinary supervision to review whether the trial court in Oklahoma had personal jurisdiction over Petitioners, when (a) they appeared in the case before objecting to jurisdiction, (b) personal jurisdiction over parents in custody proceedings is not necessary, (c) they were served with notice in Oklahoma, and (d) they committed crimes while in Oklahoma?

2. Although not properly raised by Petitioners, should this Court consider whether the Oklahoma trial court had jurisdiction over the subject matter consistent with the Uniform Child Custody Jurisdiction Act, when (a) it is an issue of state law, (b) the deprived children were present in Oklahoma, and (c) it was in the best interest of the children?

3. Whether violation of the Full Faith and Credit Clause is properly before this court when Petitioners did not raise the question with the Oklahoma courts, and there is no judgment entitled to full faith and credit?

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OPINIONS AND JUDGMENTS BELOW

Petitioners failed to identify all proceedings below:[1]

[1]Petitioners filed several other actions related to the proceedings below. Those proceedings are identified in Petitioners' Application for Extension of Time to File Petition for Writ of Certiorari, filed with this Court.

In the Matter of Charles and June Okun Children Under the Age of 18 Alleged Deprived as Defined by the Laws of Oklahoma, District Court of Pontotoc County, Oklahoma, Case No. J-91-47 (Order after Adjudicatory Hearing filed January 9, 1992). App. A.

In the Matter of C.O. and J.O., Court of Appeals of Oklahoma, Nos. 79391, 79004, 856 P.2d 290 (Okla. Ct. App. March 30, 1993).

State of Oklahoma v. James Okun and Norma Okun, Supreme Court of the State of Oklahoma, Nos. 79,391 and 79,004 (Certiorari denied, June 22, 1993).

STATUTORY PROVISIONS INVOLVED

Petitioners failed to set forth the entire text of Okla. Stat. tit. 43, § 505, which provides:

Prerequisites for jurisdiction

A. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

1. This state:

   a. is the home state of the child at the time of commencement of the proceeding, or

   b. had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention

by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

2. It is in the best interest of the child that a court of this state assume jurisdiction because:

a. the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

b. there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships; or

3. The child is physically present in this state and:

a. the child has been abandoned, or

b. it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

4. a. it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs 1, 2 or 3 of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and

b. it is in the best interest of the child that this court assume jurisdiction.

B. Except under paragraphs 3 and 4 of subsection A of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

C. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

D. The controlling criterion for awarding custody by a court of this state shall always be what is in the best interest of the child, other statutory provisions merely being factors which may be considered.

Section 508(A) of the Oklahoma Uniform Child Custody Jurisdiction Act states:

> A. A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

The relevant portion of section 1102 of Title 10 of the Oklahoma Statutes provides:

> A. Upon the filing of a petition, the district court shall have jurisdiction of any child who is or is alleged to be delinquent, in need of supervision or deprived, who is found within the county; and of the parent, guardian or legal custodian of said child, regardless of where the parent, guardian or

legal custodian is found.

Section 1116 of Title 10 of the Oklahoma Statutes provides in part:

. . . .

> B. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the court at least once every six (6) months until such time as the child is returned to the custody of his parents. No later than eighteen (18) months after placing a child in foster care and every twelve (12) months thereafter, the court making the original order of adjudication shall conduct a dispositional hearing to consider whether the child should be returned to his parents or other family member; the child should be continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child because of exceptional circumstances, should remain in foster care on a long-term basis as a permanent plan or with a goal of independent living.
>
> C. The court may not terminate the rights of a parent who has not been notified that the parental rights might be terminated. If the court terminates the rights of a parent and commits the child to an individual or agency, the court may invest in such individual or agency authority to consent to the adoption of the child. Provided, that where the court commits the child to the Department, it shall vest the Department with authority to place the child and, upon notice to the court that an adoption petition has been filed concerning said child, invest the Department with authority to consent to the

adoption of the child, and the jurisdiction of the committing court shall terminate.

STATEMENT OF THE CASE

The questions presented for review by this Court arise from proceedings brought by the State of Oklahoma[2] regarding the welfare of two children, Charles and Jane Okun. These proceedings began following discovery of abuse of the children when they were taken into protective custody after the arrest of the parents, Petitioners herein, for committing crimes in Oklahoma.

On the night of November 6, 1991, while driving through Pontotoc County, Oklahoma, James Okun intentionally rammed two vehicles with the vehicle in which he, his wife and two children were riding. (Pet. App. A-18-A-19). At the time the father rear-ended the other vehicles, the children were riding, unbuckled, in the back seat on top of piled-up belongings. (Pet. App. A-23). The Okuns had driven to Chicago and presumably were returning to Louisiana. The family had traveled to several states after leaving Chicago, supposedly attempting to escape Mrs. Okun's relatives who they believed were chasing them, when they ended up in Oklahoma. (Pet. App. A-27).

The drivers of the other vehicles reported the episodes and the police arrested both the mother and the father at a convenience store in Ada, Oklahoma. James Okun was arrested for assault and battery with a dangerous weapon, and Norma Okun was arrested for obstructing an officer in

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[2]The State of Oklahoma, through the Pontotoc County District Attorney's Office, in its role as parens patriae filed the child neglect and dependency proceedings. It was not the Oklahoma Department of Human Services who brought the actions to have the children adjudicated deprived and the parental rights terminated. (Pet. 4).

the performance of his duties.[3] (Pet. App. A-19).

Because both parents were incarcerated, the children were placed into protective custody with the Oklahoma Department of Human Services ("DHS"). The child Charles Okun informed the foster parent and the trooper investigating the assault with the vehicle that he and his sister had been physically and sexually abused and that his father ran the cars off the road because he believed, although mistakenly, the abusers were in the cars. (Pet. App. A-19).

During his investigation, the officer also discovered 143 cassette tapes entitled such names as "C.O.'s scissors," "Sex with God" and "Murder."[4] (Pet. App. A-19). The tapes revealed hours and hours of re-creation and reenactment of sexual abuse, invented in the parents' minds. Charles was forced to reenact abuse the parents believed happened to them as children and to Charles and Jane. Physical examinations performed by a Louisiana doctor before the Okuns ended up in Oklahoma revealed no evidence of sexual abuse. The parents, however, refused to believe this conclusion and continued to force their children to re-create

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[3]Petitioners incorrectly identify the charges (Pet. 5 n. 4). Additionally, James Okun was convicted and received a "deferred sentence;" Oklahoma did not "defer prosecution." And the charges against Mrs. Okun have never been dismissed as Petitioners contend. (Pet. 5 n.4).

[4]The tapes were discovered during an inventory of the car. The officer seized the tapes after obtaining a search warrant upon the suspicion of child abuse or child pornography. (Pet. App. A-19). Petitioners have no basis for asserting that the search warrant was "invalidly obtained." (Pet. 9).

and relive acts of bizarre sexual abuse.[5] (Pet. App. A-30-A-31).

After a hearing on November 7, 1991, Judge Martha Kilgore[6] ordered the children placed in the emergency custody of DHS pending the filing of a petition and directing all parties to appear on November 14, 1991. (Pet. App. A-35). Based on Charles' statement and the contents of the tapes, the district attorney's office filed a petition on November 14, 1991, seeking to have the children adjudicated deprived. (Pet. App. A-19). The parents appeared on November 14, represented by counsel, and received notice that the petition had been filed. (Pet. App. A-45, A-46).

Subsequently, on December 5, 1991 and on January 2, 1992, the parents filed motions to dismiss the proceedings; they objected to the court's jurisdiction. (Pet. App. A-23). The court denied the motions and, on January 3, 1992, the children were adjudicated deprived and placed in the temporary custody of DHS. (Pet. App. A-42-A-43; Resp. App. A). The trial court concluded the parents were unable "to provide a physically safe environment for the children, there had been mental and emotional abuse of the children by the parents, and that the parents are unable to provide a stable home environment in the emotional and psychological sense." (Pet. App. A-29) (Court of Appeals summarizing

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[5]The tapes did not simply contain "conversations," as Petitioners contend. (Pet. 9). Furthermore, the son was not simply "encouraged" to participate; he was forced; he begged his mother not to do it and complained that he was frightened. (Pet. App. A-30).

[6]Judge Kilgore is an Associate District Judge for Pontotoc County; she is not an "Assistant" District Judge (Pet. 5). The hearing was held on November 7, 1991 contrary to Petitioners' implication that it was held two months later because the order was not filed until January 2, 1992.

the trial court's findings).

The motion filed on January 2, 1992 included an order issued by the juvenile court of East Baton Rouge Parish, Louisiana. (Pet. App. A-23). That order was entered in a case purportedly brought by Charles and Jane Okun, through their parents, James and Norma Okun. (Pet. App. A-33). However, at the time they initiated the action, the children were properly in the custody of the Oklahoma Department of Human Services. Additionally, the State of Oklahoma was not a party to the Louisiana case. An attorney engaged by the parents apparently obtained the order ex parte, with no notice to the State of Oklahoma. The children were not represented by an attorney. The Louisiana declaratory judgment was not a decree regarding custody of the Okun children, and it did not make any demand, or even a request for return of the children to Louisiana. (Pet. App. A-33-A-34).

Although the trial court ordered the parents on January 3, 1992 to obtain a psychological evaluation, they repeatedly failed to submit to such an assessment. Finally, on August 18, 1992, the evaluations and recommendations of Dr. LeCorgne, a doctor chosen by Petitioners, were filed with the court. Dr. LeCorgne concluded the parents were deeply disturbed, suffering from delusional disorder. Nonetheless, throughout the proceedings, the parents continued to believe they had not harmed their children and treatment was not necessary. (Pet. App. A-7-A-10).

In an effort to gain the parents' compliance with the court-ordered plan and reunify the family, the Oklahoma DHS worker contacted the Louisiana department of human services. A Louisiana worker contacted the parents but was unable to gain their cooperation. (Pet. App. A-11-A-12).

After nineteen months of efforts to reunify the family and overcome the parents' refusal to comply with the court-

ordered plan to correct the conduct that resulted in the deprived adjudication, the State of Oklahoma filed a petition to terminate Petitioners' parental rights. After a three-day jury trial in November, 1993, the jury found that the parental rights of both parents should be terminated. (Pet. App. A-6, A-10).

SUMMARY OF ARGUMENT

It is Respondent's position that Petitioners waived all issues they attempt to present to the Court for review by failing to raise them below. Petitioners also fail to identify any important, unresolved issue of federal law.

If needed, the court had jurisdiction over the parties because they were served in Oklahoma. However, minimum contacts between a parent and the forum is not necessary in custody proceedings. The Oklahoma trial court also has general subject matter jurisdiction, including actions involving children alleged to be deprived who are found in the State. Its jurisdiction was not limited by the Uniform Child Custody Jurisdiction Act ("UCCJA").

Oklahoma did not violate the Full Faith and Credit Clause by ignoring or failing to recognize a custody decree from another state. The only "judgment" from another state was an expression of its willingness to accept a case involving the welfare of the children. A judgment of a state court is not due full faith and credit unless it is made with personal jurisdiction over the person or entity sought to be bound. Because the State of Oklahoma was a party to the Oklahoma action but not the Louisiana action, the Louisiana judgment could not bind the State of Oklahoma in the courts of Oklahoma.

ARGUMENT

I. THIS COURT NEED NOT ACCEPT REVIEW OF WHETHER OKLAHOMA HAD PERSONAL OR SUBJECT MATTER JURISDICTION.

Whether the courts of Oklahoma had jurisdiction over the parties and the subject matter are not appropriate issues for this Court's review. The Oklahoma courts did not decide any important issue of federal law concerning these issues in a way that conflicts with established law.

A. Petitioners Were Not Deprived of Due Process and Waived the Right to Raise Lack of Personal Jurisdiction.

Petitioners waived their right to object to personal jurisdiction. In any event, Oklahoma courts had jurisdiction over them. Furthermore, personal jurisdiction over Petitioners in the dependency and termination proceedings was unnecessary.

Petitioners mistakenly contend their due process rights were violated by Oklahoma's interpretation of the UCCJA because Oklahoma did not have minimum contacts with the family, who were residents of Louisiana. Although not necessary, Oklahoma did have personal jurisdiction over the parents and, obviously, the children. Anyway, the application of the UCCJA in this case had nothing to do with personal jurisdiction; the UCCJA deals with subject matter jurisdiction.

Respondent first notes that Petitioners appeared in this case before ever raising any objection to personal jurisdiction, thereby waiving their right to object to jurisdiction. See Okla. Stat. tit. 12, § 2012(F). They appeared on November 14, 1991 regarding the temporary

custody of their children. At that time, they received notice of the filing of a petition by the State of Oklahoma to have the children adjudicated deprived. It was not until December 5, 1991 that the parents filed a motion to dismiss. Accordingly, Petitioners submitted to the jurisdiction of the trial court in Pontotoc County, Oklahoma.

Regardless, Petitioners have no valid objection to the exercise of personal jurisdiction by Oklahoma in this case. They personally received notice of the action while physically present in the State.

Personal service on a nonresident while temporarily in a state enables that state to exercise personal jurisdiction over him, even in a suit unrelated to his activities in the state. *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604 (1990). Minimum contacts with the state are not necessary in such circumstances. *Id.* at 608. As this Court made clear in *Burnham*:

> Among the most firmly established principles of personal jurisdiction in American tradition is that the courts of a State have jurisdiction over nonresidents who are physically present in the State. The view developed early that each State had the power to hale before its courts any individual who could be found within its borders, and that once having acquired jurisdiction over such a person by properly serving him with process, the State could retain jurisdiction to enter judgment against him, no matter how fleeting his visit.

495 U.S. at 610-11 (citations omitted).

Because of the nature of these proceedings, it was not even necessary for Oklahoma to have personal jurisdiction over Petitioners. In *Shaffer v. Heitner*, 433 U.S. 186

(1977), this Court determined that the minimum contacts standard set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) did not apply to cases involving "adjudications of status." 433 U.S. at 208 n. 30. Child custody proceedings and adoptions are classified as status proceedings. *In Re Matter of C.O. and J.O.*, 856 P.2d 290, 293 n. 2; (Okla. Ct. App. 1993); *see also* Bodenheimer and Neeley-Kvarme, *Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko*, 12 U.C. Davis L. Rev. 229, 246 (1979). If the parties to such a proceeding receive notice and an opportunity to be heard, then due process requirements are satisfied without personal jurisdiction. *Hudson v. Hudson*, 670 P.2d 287, 294-95 (Wash. Ct. App. 1983).

Here, Petitioners have never contended there were defects in the notice. *In re C.O and J.O.*, 856 P.2d at 293 n. 2. Thus, due process concerns were satisfied.

B. Although the Issue Was Not Properly Raised By Petitioners, the Trial Court Had Subject Matter Jurisdiction Over All Proceedings and Oklahoma Correctly Applied the UCCJA.

Petitioners base their due process concerns entirely on Oklahoma's application of the UCCJA.[7] But the UCCJA primarily concerns subject matter jurisdiction and not jurisdiction over parties. *Howard v. Howard*, 509 So. 2d 1260, 1261 (Fla. Dist. Ct. App. 1987); *Mace v. Mace*, 341 N.W.2d 307, 311 (Neb. 1983); *Boisvert v. Boisvert*, 466 A.2d 1184, 1185 (Vt. 1983); *Sholty v. Carruth*, 616 P.2d

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[7]It is evident that Petitioners' objection is based on personal jurisdiction because they cite cases such as *Shaffer v. Heitner*, 433 U.S. 186 (1977) and *Kulko v. Superior Ct. of Cal.*, 436 U.S. 84 (1978), and they discuss their lack of "minimum contacts" with the State of Oklahoma. They, however, proceed with an analysis of subject matter jurisdiction.

918, 919 (Ariz. Ct. App. 1980). To the extent Petitioners put the issue before the Court, the Oklahoma court had proper subject matter jurisdiction over the case on several bases.

The issue of Oklahoma's interpretation of the UCCJA is not a proper one for this Court's review. It is a question of state law, which the Oklahoma Court of Appeals addressed twice and with respect to which the Oklahoma Supreme Court denied certiorari.

Oklahoma's application of the UCCJA does not involve any important, unresolved question of federal law. The UCCJA is not a grant of subject matter jurisdiction, but rather a limitation upon existing jurisdiction. *Matter of C.A.D.*, 839 P.2d 165, 172 (Okla. 1992); *Siegel v. Siegel*, 417 N.E.2d 1312, 1316 (Ill. 1981); *In re Marriage of Alexander*, 623 N.E.2d 921, 923 (Ill. App. Ct. 1993). Accordingly, Fourteenth Amendment due process limitations are not the issue. *Siegel*, 417 N.E.2d at 1316.

Oklahoma courts have jurisdiction over matters concerning the welfare of allegedly deprived children present in Oklahoma. The judge of the trial court correctly concluded that she had jurisdiction over the dependency and neglect proceedings pursuant to Okla. Stat. tit. 10, § 1102 and Okla. Stat. tit. 10, § 1605(A)(3)(b) [now Okla. Stat. tit. 43, § 505]. Section 1102 provides that a district court has jurisdiction of any child alleged to be in need of supervision or deprived, who is found in the county. Section 1116 provides that such court may terminate parental rights.

Oklahoma, like several other states,[8] has determined that

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[8] *In re Interest of L.W.*, 486 N.W. 2d 486 (Neb. 1992) (holding that the UCCJA applied to dependency proceedings); *Gainey v. Olivo*, 373 S.E.2d 4 (Ga. 1988) (concluding that adoption proceedings are "custody

custody matters covered by the UCCJA include dependency proceedings and other proceedings not necessarily incident to divorce actions. *In re C.O. and J.O.*, 856 P.2d at 293; *see also, Matter of Guardianship of Walling*, 727 P.2d 586, 590 (Okla. 1986) (holding that the UCCJA applies to proceedings for guardianship of minors). Section 505 of Oklahoma's UCCJA provides four separate bases of jurisdiction over child custody proceedings. Okla. Stat. tit. 43, § 505.

Besides section 1102 of Title 10, the Oklahoma trial court had two other bases for jurisdiction under section 505 of the UCCJA, and the court was not required to forego the exercise of jurisdiction pursuant to the *forum non conveniens* provision of the Act. The court had emergency jurisdiction under Okla. Stat. tit. 43, § 505(A)(3)(b) because the children were present in the State and an emergency situation required their protection. They were initially taken into custody because their parents had been arrested. The children remained in DHS' emergency custody due to the discovery of suspected child abuse.

Additionally, under section 505(A)(2) and 505(D), Oklahoma could exercise jurisdiction because it was in the best interest of the children.[9] And there were substantial connections with and evidence in Oklahoma. The evidence of emotional abuse of the children and exposure to physical harm was in Oklahoma. This evidence included the tapes

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proceedings" within the meaning of the UCCJA); *In re B.J.C.*, 540 A.2d 1047 (Vt. 1988) (holding the UCCJA applicable to dependency proceedings).

[9]The State of Oklahoma certainly could not give the children back to the parents, pending the institution of proceedings in Louisiana. Anyway, Louisiana never sought the return of the children.

reflecting the traumatizing sessions with Charles[10] and the wrecked vehicles. The witnesses, including the victims of the car incidents, the trooper and the psychologist, were in Oklahoma. Evidence regarding the children's current emotional state was in Oklahoma. And, obviously Oklahoma, which is a "contestant" for purposes of the UCCJA,[11] has a significant connection with the State.

At no time did the State of Louisiana institute custody or dependency proceedings. Therefore, Oklahoma had no alternative forum to which to transfer the proceedings.

Given the circumstances, the Oklahoma court was not prohibited from continuing to exercise jurisdiction due to section 508 of the UCCJA, because there was no pending custody proceeding in Louisiana. Section 508 prohibits an Oklahoma court from exercising its jurisdiction if there is a custody proceeding regarding the child "pending" in another state. Okla. Stat. tit. 43, § 508(A). For the same reason, Oklahoma did not even have the option, under section 509, to consider whether Louisiana was a more convenient forum. Section 509 provides a court that has jurisdiction under the Act may decline jurisdiction if another state is a more appropriate forum. Okla. Stat. tit. 43, § 509(A). In any event, the determination of whether to decline jurisdiction under the *forum non conveniens* provision is discretionary. *Holt v. District Ct.*, 626 P.2d 1336, 1341 (Okla. 1981).

One of the primary purposes of the UCCJA is to avoid interstate custody disputes. Okla. Stat. tit. 43, § 502(1). Here, no other state was exercising competing jurisdiction

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[10]The psychologist who counseled Charles Okun described the parents' conduct with the children as traumatizing and detrimental. 856 P.2d at 297.

[11]*See* Okla. Stat. tit. 43, § 504(1).

over the children. Accordingly, Oklahoma properly assumed jurisdiction.

II. THERE WAS NO LOUISIANA JUDGMENT OR CUSTODY DECREE TO WHICH TO GIVE FULL FAITH AND CREDIT. FURTHERMORE, PETITIONERS WAIVED THE RIGHT TO RAISE THE ISSUE.

Any claim by Petitioners that Oklahoma somehow violated the Full Faith and Credit Clause of the United States Constitution is not properly before the Court. The Oklahoma Court of Appeals and Oklahoma Supreme Court have not addressed any such issue because it was not raised below by Petitioners.

When reviewing a judgment of a state court, this Court has held that it will not determine whether the state was bound to give full faith and credit to a judgment of a sister state if the question was not presented to the state court. *Hanson v. Denckla*, 357 U.S. 235, 245 (1958). Petitioners' claim that Oklahoma's failure to return the children to Louisiana had the effect of violating the Full Faith and Credit Clause is raised too late. *Wabash R.R. Co. v. Flannigan*, 192 U.S. 29 (1904).

In determining whether a judgment of one state is entitled to full faitn and credit in the courts of another state, the only function of the Supreme Court is to determine whether the state entered a valid judgment consistent with the United States Constitution. *Hanson v. Denckla*, 357 U.S. at 256. A judgment is due full faith and credit if, among other requirements, it is made with jurisdiction over the person sought to be bound. *Hansberry v. Lee*, 311 U.S. 32, 40 (1940). Here, the State of Oklahoma is the party Petitioners apparently seek to bind.

Petitioners seek to bind the State of Oklahoma to a judgment entered in Louisiana, to which Oklahoma was not a party. However, the Louisiana order could have no effect

in the Oklahoma action in which the State was a party.[12] *Hansberry, supra.*

In this case, the Oklahoma court had no valid judgment of a sister state before it. Apparently realizing the Oklahoma trial court did not fail to recognize a valid Louisiana judgment, Petitioners do not even mention the so-called "Declaratory Judgment" in their full faith and credit argument. They simply claim Oklahoma breached the UCCJA by not returning the children to Louisiana, which has nothing to do with full faith and credit. Article IV, section 1 of the United States Constitution requires the courts of one state to give full faith and credit to judgments of sister states; it does not require a court to "transfer" a case to a sister state.

The Louisiana "Declaratory Judgment" really was not a judgment at all. It was an expression of the Louisiana court's willingness to accept the case if it was filed there.[13] No case or controversy was even presented in such an action. Louisiana courts certainly had not entered a custody decree regarding the children. Thus, there was nothing even potentially due full faith and credit.

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[12]And contrary to Petitioners' suggestion that Oklahoma ignored the Louisiana judgment, the Oklahoma courts did consider its effect. The Oklahoma Court of Appeals stated:

> Although the juvenile court of the parish of East Baton Rouge, Louisiana, issued an order declaring it to be the more appropriate forum, such an order, by itself, does not require the Oklahoma court to decline jurisdiction after it had already started proceedings.

In re C.O. and J.O., 856 P.2d at 296.

[13]Judge Richey of the juvenile court in Louisiana may have declared that her court was the more preferable jurisdiction for the proceedings involving disposition of the minor children. The decision to prosecute such an action, however, was not Judge Richey's to make. The State of Louisiana had to make the decision, and it never instituted dependency proceedings in Louisiana.

Besides not having personal jurisdiction over the State of Oklahoma, there are several other reasons the Louisiana "judgment" is not entitled to full faith and credit. The State of Oklahoma received no notice of the action. Additionally, the judgment indicates that the parents brought the action on behalf of the children. *Kozlowski v. State*, 534 So.2d 1260 (La. Ct. App. 1988) (holding that state is appropriate person to bring suit on minor's behalf when minor is in state's custody). In December, 1991, when the Louisiana judgment was entered, the children were in the custody of the Oklahoma DHS, which the trial court had ordered under a proper exercise of its emergency jurisdiction. The parents, therefore, had no authority to act on behalf of the children. And no attorney represented the children's interest in the Louisiana proceedings.

Finally, the "first-in-time" rules of the UCCJA actually require Louisiana courts to defer to Oklahoma's exercise of jurisdiction on grounds of comity. *Matter of C.A.D.*, 839 P.2d 165, 172 (Okla. 1992). The UCCJA does not require the result suggested by Petitioners, which was for Oklahoma to return the children to Louisiana for an investigation there.[14] The UCCJA is meant to protect children, not necessarily the parents of children.

Oklahoma and Louisiana had not each entered competing custody decrees, which would require the Oklahoma court to determine what effect to give the Louisiana decree. Although Petitioners failed to raise the full faith and credit issue before the Oklahoma courts, they cannot point to any judgment entitled to full faith and credit in the courts of Oklahoma anyway.

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[14]In any event, Oklahoma tried to have a home study done of the parents' home by a Louisiana social worker and to have assistance and services offered the parents, but the parents refused to cooperate. (Pet. App. A-11-A-12).

CONCLUSION

It is apparent that Petitioners have raised no issue that deserves review by this Court. Personal jurisdiction requirements have long been established, and Oklahoma courts are capable of assuring due process rights are protected. Oklahoma had subject matter jurisdiction over the proceedings, and its application of the UCCJA did not violate Petitioners'-rights. Petitioners failed to identify any judgment requiring the operation of full faith and credit. Anyway, the State of Oklahoma could not be bound by a judgment to which it was not a party.

Thus, even if Petitioners had not waived their right to review of the issues presented as they have, there is no basis for review by this Court. Respondents ask the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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